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THE STORY OF  
**STUFF**  
PROJECT



**GRASSROOTS**  
Environmental Education

## Comparison of Extended Producer Responsibility (EPR) Bills in New York

Support the Englebright EPR bill A10185

Oppose S1185-C

Pass the Bigger Better Bottle Bill A10184/S9146

May 31, 2022

	<b><u>A10185 Assemblymember Englebright Bill</u></b>	<b><u>S1185 Senator Kaminsky Bill</u></b>
<b>When \$\$ flows to Local Governments</b>	Within two years from enactment.	Approximately 4-5 years after enactment.
<b>Packaging Reduction Requirements</b>	-50% reduction in units over 10 years.  -Prohibits companies from switching to plastic to meet their reduction requirements	-None.
<b>Packaging Design Standards</b>	After reducing packaging by 50%, 90% of the remaining packaging must be either recyclable or made of post-consumer recycled content or compostable within 12 years.  -Having clear requirements will prompt producers to redesign their packaging and boost the markets for recycled materials.	-None in legislation.  -Producers suggest their own goals for recycling and post consumer recycled content in their plans, and can request adjustments based on market availability.  -This will be a race to the bottom for packaging standards.
<b>Chemical Recycling a.k.a. plastic burning</b>	Clearly rejects chemical recycling and any waste-to-fuel schemes by excluding energy recovery or energy generation through combustion, incineration, pyrolysis, gasification, solvolysis, waste to fuel or any high heat or chemical conversion process.	-Allows DEC to determine when/if energy recovery, energy generation, combustion, use as a fuel, landfill disposal, and chemical conversion processes can be considered recycling. waste-to-fuel processes to be considered recycling as long as another product is also created.  -This will prop up the false solution of plastic burning a.k.a. chemical recycling or advanced recycling, which is being promoted by petrochemical companies.
<b>Bottle Bill Relationship</b>	-Must also pass an expansion of the Bottle Bill to avoid adding beverage containers to EPR that are currently not	-Must also pass an expansion of the Bottle Bill to avoid adding beverage containers to EPR that are currently not

	covered by the Bottle Bill, but are best handled through that system. <b>See Assembly Bill 10184 introduced by Englebright.</b>	covered by the Bottle Bill, but are best handled through that system. <b>See Senate Bill 9164 introduced by Senator May.</b>
<b>Toxics in Packaging</b>	<p>-Bans high priority toxic substances and materials:</p> <ul style="list-style-type: none"> <li>● Ortho-phthalates</li> <li>● Bisphenols</li> <li>● Per- and polyfluoroalkyl substances (PFAS)</li> <li>● Lead and lead compounds</li> <li>● Hexavalent chromium and compounds</li> <li>● Cadmium and cadmium compounds</li> <li>● Mercury and mercury compounds</li> <li>● Benzophenone and its derivatives</li> <li>● Halogenated flame retardants</li> <li>● Perchlorate</li> <li>● Formaldehyde</li> <li>● Toluene</li> <li>● Polyvinyl chloride</li> <li>● Polystyrene</li> <li>● Polycarbonate</li> </ul>	-Attempts to ban carcinogens, mutagens, or reproductive toxicants through incorporation by reference to European Union regulations, which is not a reliable legal framework.
<b>Covered Materials</b>	<p>-All packaging used to sell and transport products to market in New York.</p> <p>-Includes packaging filled at the point of sale.</p> <p>-Exempts medical packaging, packaging for hazardous substances, and biologics.</p> <p>-Exempts packaging used for long term storage or protection of a durable product that is expected to be used for that purpose for a period of at least 5 years.</p>	<p>-All packaging used to sell and transport products to market in New York.</p> <p>-Paper products such as flyers, brochures, booklets, catalogs and telephone directories.</p> <p>-Single-use plastic items such as straws, utensils, cups, plates, and plastic bags.</p> <p>-Exempts newspapers, magazines, bound books, medical packaging, packaging for hazardous substances and biologics.</p>

<p><b>Definition of producer</b></p>	<p>-Producer is broadly defined to capture all entities that sell a product in packaging. Includes entities that sell products into the state via the internet.</p> <p>-Includes companies that sell packaging into the state that is filled at the point of sale.</p> <p>-Exempts small producers, defined as those that realized less than two million dollars in total gross revenue or generated less than one ton of covered material annually.</p>	<p>-Producer is broadly defined to capture all entities that sell a product in packaging. Includes entities that sell products into the state via the internet.</p> <p>-Exempts small producers, defined as those generating less than one million dollars in annual revenue or generating less than one ton of covered material in NY annually.</p> <p>-Exempts 501(c)(3) organizations and governments</p> <p>-Exempts producers that operate as a single point of retail sale and are not supplied or operated as part of a franchise.</p> <p>-Exempting producers that operate as a single point of retail sale is a loophole that would leave a large number of businesses uncovered by the law when they otherwise meet the sales and packaging thresholds.</p>
<p><b>Producer Responsibility Structure</b></p>	<p>-Producers can implement their own program or work together to meet the requirements of the bill.</p>	<p>-Producers can form a Producer Responsibility Organization (PRO) in any way they choose.</p> <p>-Producers can also implement their own program without belonging to a PRO.</p>
<p><b>Recycling Rates</b></p>	<p>-Producers are 100% responsible for their own product packaging.</p> <p>-Packaging design standards will drive up the recycling rate for packaging.</p>	<p>-Producers identify their own rates in their plans.</p> <p>-Can set different rates for different materials, which is a huge nod to plastics, since they are much less recyclable than other materials.</p> <p>-Can adjust rates down, which offers no incentive to improve packaging design.</p>

<b>Advisory Board</b>	None	-Industry dominated advisory board.
<b>Program Structure</b>	<p>-Producers, acting individually or collaboratively, submit plans to DEC that detail how they will meet the requirements of the law.</p> <p>-DEC approves or denies the plan and uses the plan and annual reporting to monitor compliance. If plan is denied, DEC works with Producer(s) to develop an acceptable plan.</p> <p>-Required to report yearly to DEC</p>	<p>-Producers, acting individually or collaboratively in the form of a Producer Responsibility Organization, submit plans to DEC that detail how they will meet the requirements of the law.</p> <p>-DEC approves or denies the plan and uses the plan and annual reporting to monitor compliance. If plan is denied, DEC works with Producer(s) to develop an acceptable plan.</p> <p>-The plans are developed in consultation with the Advisory Board.</p> <p>-Required to report yearly to DEC</p>
<b>Recycling/ Municipal Reimbursement</b>	<p>-Municipalities can be reimbursed or transfer their recycling requirements for packaging to Producers.</p> <p>-Recycling must remain at least as convenient as it is currently.</p> <p>-Collection must be free.</p>	<p>-Municipalities can be reimbursed or transfer their recycling requirements for packaging to Producer Responsibility Organizations.</p> <p>-Recycling must remain at least as convenient as it is currently.</p> <p>-Collection must be free.</p>
<b>Requirements of Producer(s)/ PROs</b>	<p>-Develop plans to manage waste of participating producers.</p> <p>-Collect fees sufficient to fund the plan and requirements from the Needs Assessment.</p> <p>-Implement their plan, which includes reimbursing</p>	<p>-Develop plans to manage waste of participating producers.</p> <p>-Collect fees from members sufficient to fund the plan and requirements from the Needs Assessment.</p> <p>-Implement their plan, which includes reimbursing</p>

	<p>municipalities/entities involved in recycling/handling their product packaging, or create and operate a take back/recycling program; conduct public education campaigns.</p> <p>-Report annually to DEC</p>	<p>municipalities/entities involved in recycling/handling their product packaging, or create and operate a take back/recycling program; conduct public education campaigns.</p> <p>-Report annually to DEC</p>
<b>Needs Assessment</b>	<p>-Ample consideration of reuse, refill, and reduction, in addition to recycling.</p> <p>-Barriers affecting equitable access to recycling.</p> <p>-Availability of opportunities in the recycling and reuse systems for MWBE</p> <p>-Analysis of location and pollution loads of waste infrastructure</p>	<p>-Lacks analysis on reuse + refill infrastructure or reduction.</p> <p>-Contains some provisions to establish an understanding of equity.</p> <p>-No analysis of environmental justice impacts of waste infrastructure.</p>
<b>Fees</b>	<p>-Individual producers, or those acting in collaboration, must self-assess fees sufficient to implement their DEC approved plans and meet the needs established in the statewide needs assessment.</p> <p>-In the case of producers working collaboratively, the fees must be assessed to reward producers for source reduction and designing for recyclability and to disincentivize designs or practices that increase costs of managing packaging or paper products.</p> <p>-DEC sets recommended fees in regs by material type and environmental impact of the packaging</p>	<p>-PROs, or producers acting independently, must self-assess fees sufficient to implement their DEC approved plans and meet the needs established in the statewide needs assessment.</p> <p>-In the case of a PRO, where multiple producers are working together, the fees must be assessed to reward producers for source reduction and designing for recyclability and that disincentivize designs or practices that increase costs of managing packaging or paper products.</p>
<b>What can the money be used</b>	<p>-Reuse, refill, reduction, and recycling projects.</p>	<p>-Reimburse municipalities, MRFs, and other participants in the recycling industry for recycling costs. DEC sets</p>

<b>for?</b>	<p>-Reimburse municipalities, MRFs, and other participants in the recycling industry for recycling costs.</p> <p>-Producer(s) operated take back/recycling programs.</p> <p>-Public education conducted by the Producer(s).</p>	<p>reimbursement formula.</p> <p>-PRO/producer operated take back/recycling programs.</p> <p>-Public education conducted by the PRO/producer.</p> <p>-Infrastructure for recycling.</p>
<b>Oversight</b>	<p>-Yearly reports to DEC.</p> <p>-Requires annual financial audit by a third party.</p> <p>-Fines to incentivize compliance.</p>	<p>-Yearly reports to DEC.</p> <p>-Requires annual financial audit by a third party.</p> <p>-Fines to incentivize compliance.</p>
<b>Prohibitions</b>	<p>-Two years after the effective date, producers are prohibited from selling products that are not in compliance with the law.</p> <p>-No consumer point of sale or point of collection fees</p>	<p>-Four years after the effective date, producers are prohibited from selling products that are not in compliance with the law.</p> <p>-No consumer point of sale or point of collection fees</p>
<b>Producer Reporting</b>	<p>-Producer yearly report includes:</p> <ul style="list-style-type: none"> <li>● Total amount of packaging material, by weight and by unit distributed into the state and the percentage that was internet transactions</li> <li>● Costs of implementing the program</li> <li>● Copy of independent financial audit</li> <li>● How the program compensated municipalities and/or others involved in the recycling system, if applicable</li> <li>● Information necessary to determine compliance with the following requirements: reduction,</li> </ul>	<p>-Each PRO submits an annual report to DEC that includes:</p> <ul style="list-style-type: none"> <li>● The methods used to collect, transport, and process covered packaging and paper</li> <li>● Evaluation of program’s convenience</li> <li>● Status of achieving the recovery and recycling rates as set forth in the plan</li> <li>● Status of achieving the post-consumer recycled content rates set forth in the plan.</li> <li>● Amount of packaging and paper products collected (no measurement specified) by</li> </ul>

	reuse/refill system, recycling and post-consumer recycled material, toxic substances, and labeling.	<p>disposition and material type.</p> <ul style="list-style-type: none"> <li>● Total cost of program implementation</li> <li>● Copy of independent financial audit.</li> <li>● How the program compensated municipalities and/or others involved in the recycling system, if applicable</li> <li>● Samples of educational materials</li> <li>● Educational efforts undertaken</li> <li>● Investments made in infrastructure and market development.</li> </ul>
<b>DEC Reporting</b>	<p>-DEC produces a bi-annual report that includes:</p> <ul style="list-style-type: none"> <li>● Waste characterization studies</li> <li>● litter surveys</li> <li>● list of readily recyclable materials in the state</li> <li>● audit of inbound and outbound recyclable materials</li> <li>● Participating producers and brands</li> <li>● Amount and type of packaging sold within the state</li> <li>● Baseline and annual report of the number and type of packaging products, both disposable and reusable, generated in the state</li> <li>● Description of all funding issued</li> <li>● Data verifying compliance of materials with toxics bans, and reporting on what chemicals are being used in packaging</li> <li>● Progress toward waste reduction, reuse, and recycling benchmarks</li> </ul>	-None
<b>Effective Dates</b>	<p>-Effective immediately upon signing</p> <p>-Needs assessment within 6 months of effective date</p>	<p>-Effective 180 days after it is signed into law.</p> <p>-Advisory Board established immediately; appointments must be made within one year of effective date.</p>



	<ul style="list-style-type: none"> <li>-Plans must be submitted 18 months from effective date</li> <li>- Producers must being program implementation within 6 months of plan being approved and no later than two years after the effective date</li> <li>-One year for DEC to draft regulations</li> <li>-Toxics are banned after 12/31/2024</li> <li>-DEC reports one year after plans are implemented and every two years thereafter</li> <li>-Producers comply with labeling requirements two years after effective date.</li> </ul>	<ul style="list-style-type: none"> <li>-Needs assessment completed before plans, but no deadline in the legislation.</li> <li>-No timeline in the legislation for when plans must be submitted. Plans must cover 5 years.</li> <li>-6 months after approval of a plan, Producers must implement their plan</li> <li>-Within five years of plan approval, producers shall meet the minimum recovery, recycling, and post-consumer content rate as approved in the plan. This could be as long as 9 years after passage of the bill.</li> <li>-PRO plans go into effect no later than 4 years after passage, with or without agency approval.</li> </ul>
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